

REDACTED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____) )	
THOMAS LAUMANN, FERNANDA GARBER, )	
ROBERT SILVER, GARRETT TRAUB, )	
DAVID DILLON, and PETER HERMAN, )	
representing themselves and all others similarly )	
situated, )	12-cv-1817 (SAS)
)	
Plaintiffs, )	
)	
v. )	
)	
NATIONAL HOCKEY LEAGUE et al., )	
)	
Defendants. )	
_____) )	
FERNANDA GARBER, MARC LERNER, )	
DEREK RASMUSSEN, ROBERT SILVER, )	
GARRETT TRAUB, and PETER HERMAN, )	
representing themselves and all others similarly )	
situated, )	12-cv-3704 (SAS)
)	
Plaintiffs, )	ECF Cases
)	
v. )	
)	
OFFICE OF THE COMMISSIONER OF )	
BASEBALL et al., )	
)	
Defendants. )	
_____) )	

DECLARATION OF JON D. LITNER IN SUPPORT OF  
COMCAST’S MOTION FOR SUMMARY JUDGMENT

I, Jon D. Litner, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am Group President of NBC Sports Group and make this Declaration solely in that capacity. I am familiar with, and have personal knowledge of, the facts stated herein.

2. As Group President of NBC Sports Group, my responsibilities include oversight of all Comcast-affiliated RSNs, including but not limited to Comcast SportsNet Philadelphia, Comcast SportsNet Mid-Atlantic, Comcast SportsNet Chicago, and Comcast SportsNet California. I have had oversight responsibility for the Comcast RSNs since I began working for Comcast in 2007.<sup>1</sup>

3. In this role, my responsibilities include overseeing negotiations on behalf of the Comcast RSNs with professional sports clubs in order to secure the rights to telecast live games. I have also been generally involved with negotiations on behalf of the Comcast RSNs with MVPDs (cable, satellite, and telco television providers) in order for the RSNs to gain distribution from MVPDs.

4. Prior to joining Comcast, I was President of SportsNet New York, Executive Vice President and Chief Operating Officer of the National Hockey League, and Senior Vice President, Programming at ABC Sports.

#### **COMCAST RSNs**

5. The Comcast RSNs produce, exhibit, and distribute sports and sports-related programming. The fundamental focus of the Comcast RSNs is local in nature. Accordingly,

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<sup>1</sup> I adopt and incorporate the “Table of Abbreviations and Terms” in the Memorandum of Law in Support of Comcast’s Motion for Summary Judgment.

each strives to distribute programming of interest to its local market, whether that programming is professional sports, collegiate sports, or other sporting events.

6. Like most cable networks, the Comcast RSNs earn revenue in two principal ways. First, the Comcast RSNs charge advertisers for the right to display advertising in the programming exhibited on their services. Second, the Comcast RSNs charge MVPDs for the right to distribute the Comcast RSNs' programming service on the MVPDs' subscription video product. The fees paid by MVPDs are generally referred to as "affiliate fees." Networks typically charge MVPDs a monthly fee per subscriber who receives the programming service.

#### **RSN ACQUISITION OF LIVE MLB AND NHL RIGHTS**

7. Each of the Comcast RSN defendants in these cases has contracted with an MLB and/or a NHL club to acquire a license (such contract being commonly referred to as a "rights agreement") to telecast and otherwise exhibit that club's games within its designated home television territory ("HTT") as determined by the Leagues. With particular reference to MLB and NHL clubs, Comcast SportsNet Philadelphia telecasts games of the Philadelphia Phillies (MLB) and Philadelphia Flyers (NHL); Comcast SportsNet Mid-Atlantic telecasts games of the Washington Capitals (NHL); Comcast SportsNet Chicago telecasts the games of the Chicago Cubs (MLB), the Chicago White Sox (MLB), and the Chicago Blackhawks (NHL); and Comcast SportsNet California telecasts games of the Oakland Athletics (MLB) and the San Jose Sharks (NHL). Excerpts of the rights agreements between Comcast SportsNet Philadelphia and the Philadelphia Phillies and between Comcast SportsNet Philadelphia and the Philadelphia Flyers are attached hereto as Exhibits 1 and 2 respectively.

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. The Comcast RSNs enter into distribution agreements with MVPDs that are typically referred to as “affiliation agreements.” During negotiations with MVPDs regarding affiliation agreements, the Comcast RSNs seek to maximize their distribution within their designated HTT. Despite their efforts, however, the Comcast RSNs are not always able to realize the maximum distribution permitted by League rules.

10. To my knowledge, none of the Comcast RSNs (nor any Comcast-affiliated entity) had any role in developing the territorial rules or policies of either League. Indeed, my understanding is that these rules and policies pre-date Comcast’s ownership of any of the Comcast RSNs. (Comcast’s first investment in an RSN did not occur until 1996, in anticipation of the launch of Comcast SportsNet Philadelphia in 1997.)

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. The Comcast RSNs do not communicate with other non-affiliated RSNs regarding the existence and scope of the League rules regarding telecast territories. Each of the Comcast RSNs acquired the exclusive right (subject to such League rules) to exhibit live MLB and/or NHL games of particular clubs because it made the independent business decision that doing so served their economic self-interest.

### **RSN PRODUCTION OF LIVE GAMES**

13. After acquiring the exclusive rights to exhibit a certain number of live games of a particular MLB and/or NHL club, Comcast RSNs typically produce the game telecasts that are ultimately viewed by fans. The costs of producing a high-definition, high quality telecast of a live MLB or NHL game, which is what viewers generally expect and demand, are significant. Such a production entails, by way of example, the costs of operating state of the art production facilities housing multiple high-definition cameras, instant replay devices, animated visual effects, enhanced digital audio and databases offering useful statistics and information displayed on multiple graphics platforms. All of these technologies are utilized throughout the telecast. In addition, these productions require employing (or reimbursing the team for employment of) experienced, talented announcers and reporters to describe the action to the viewers and a skilled technical crew to steer the editorial content and technical needs of the telecast. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. Historically, prior to the growth of RSNs, a number of MLB and NHL games went untelevised, in part owing to the significant expenses associated with production. Today, by contrast, virtually all NHL and MLB games are produced for telecast, most often by an RSN.

15. In addition to producing a high quality broadcast of the game itself, the Comcast RSNs promote and encourage interest in the clubs whose games the Comcast RSNs distribute through extensive programming surrounding live game telecasts, including pre-game and post-game shows featuring interviews with players and commentators providing analysis, as well as other news, discussion and analysis programming. The pre- and post-game ancillary

programming is typically referred to as “shoulder programming” as it complements the live game telecasts.

16. The Comcast RSN defendants have won numerous awards for the quality of their MLB and NHL game telecasts, shoulder programming and related programming, including at least 75 Regional Emmy Awards since 2007.

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **OOM PACKAGES**

18. My understanding of the relevant NHL and MLB rules and policies is that the Leagues, rather than the clubs, generally control the right to telecast games outside of the clubs’ designated HTTs. The Leagues each create packages of subscription programming that feature all of the games outside of a particular local market. Those packages are available via television through MVPDs (MLB Extra Innings and NHL Center Ice) or via the Internet through the Leagues themselves (MLB.tv and NHL Game Center Live).

19. As I understand it, the Leagues do not typically produce independent telecasts for the out-of-market (“OOM”) packages. Instead, each of those packages consists of telecasts produced by individual RSNs (including the Comcast RSNs) [REDACTED]

[REDACTED]

[REDACTED] The Leagues combine these telecasts to create the OOM packages. In other words, a

subscriber to the MLB Extra Innings package residing in New York who turns on a Chicago Cubs-Philadelphia Phillies game will see either the telecast produced by Comcast SportsNet Chicago (Cubs) or the telecast produced by Comcast SportsNet Philadelphia (Phillies).

Similarly, a subscriber to MLB.tv residing in New York who streamed the Cubs-Phillies game would see the same RSN-produced telecasts streamed over the Internet.

20. My understanding is that the Leagues' own OOM packages feature local productions of virtually every other local media outlet across the country that offers MLB or NHL programming. These packages make virtually every OOM game available in every RSN's market. For example, subscribers in San Francisco are able to view YES Network's productions and telecasts of Yankees games via the League's OOM packages.

21. [REDACTED]

#### **SPORTS PROGRAMMING COSTS**

22. [REDACTED]

23. Among the reasons for the increased costs are the relative value of live sports programming in an era of increased use of digital video recorders ("DVRs") and other devices

that permit non-live viewing of television programming (and the ability to fast forward through commercials). Due to the overwhelming preference of fans to view sports on a live basis, live sports telecasts have become increasingly valuable to networks and advertisers.

24. Another reason for the increased costs is competition among networks to acquire the rights to live sports programming. Not only do existing RSNs serving the same market compete with one another to acquire such rights, new networks at both the national and local level have been created to enter the market for such rights (e.g., FS1, Time Warner Cable Sports Net).

25. The foregoing factors have contributed to a rise in sports license fees in recent years across virtually all sports with which I am familiar, including professional and college football, professional and college basketball, the Olympics, auto racing, and professional golf. Many of these sports or sporting events, including professional golf, the Olympics, NASCAR, horse racing, and collegiate football and basketball, do not have local member franchises and therefore do not have rules or policies designating HTTs in the same manner as MLB and the NHL. [REDACTED]

[REDACTED] The above sports and sporting events have all experienced substantial increases in license fees. Further, the rise in sports programming costs does not correspond temporally with the establishment of the MLB and NHL rules regarding local telecast territories, which I understand were established decades ago.

#### **INTERNET STREAMING**

26. In recent years, the possibility of exhibiting high quality telecasts via the Internet (i.e., “streaming”) has become technologically feasible. This has led to increased efforts by rights owners and networks alike to stream sports and non-sports programming for consumers.

27. The Comcast RSNs are affiliated with NBC Sports Group, which has been a leader in streaming live sports programming. For example, during the most recent Summer and Winter Olympics, which were held in the United Kingdom and Russia, respectively, NBC Sports streamed live Olympic events online and via mobile applications. This allowed fans to watch events live whenever they occurred during the day in the United States despite the time difference with the host countries. Aside from NBC Sports' coverage of the Olympics, Fox streamed the 2014 Super Bowl. Turner has streamed NBA games and March Madness. The Leagues have streamed their OOM packages. And ESPN streams much of its programming.

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **NBC'S NATIONAL BROADCAST CONTRACT WITH THE NHL**

29. As noted above, NBC Sports has extensive experience dealing with professional sports leagues and other sports associations relating to sports programming, including the United States Olympic Committee, the NFL, the NHL, and the PGA Tour. NBC's current relationship with the NHL began in 2004, and NBC is presently in the midst of a long-term agreement with the NHL to telecast NHL games nationally over-the-air on NBC and on cable television on NBCSN, as well as to stream such games over the Internet on NBC's website and via NBC's mobile apps.

30.

[REDACTED]

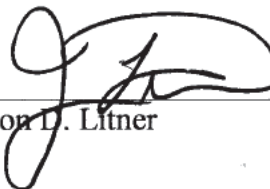
31.

[REDACTED]

32.

[REDACTED]

Executed this 14 day of May 2014.

  
Jon D. Litner